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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/678,187 | 10/06/2003 | Paul Hayward Kelly | DIX008-161 | 2340 |

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DIEDERIKS & WHITELAW, PLC
12471 Dillingham Square, #301
Woodbridge, VA 22192

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| EXAMINER |
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KUMAR, RAKESH

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| ART UNIT | PAPER NUMBER |
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3654

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/678,187 | Applicant(s) KELLY ET AL. | |
| | Examiner Rakesh Kumar | Art Unit 3654 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>10/06/2003</u> . | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Drawings

1. Referring to claim 4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: In specifications (page 11 line 9) the applicant discloses a gate pusher member 190 which is not shown in the drawings, further more the drawings display a member 140 not described in the specifications. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2,4,5,12,15 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Referring to claim 2,15 and 19. In claim 2, line 2; it is unclear as to how the means "automatically" shifts the gate assembly. It is broadly construed and generally understood that a initial manual input is required to enable the shifting of the assembly between the two positions, thus the shifting is not continuous nor self activated. It is suggested that the term "automatically" be removed.

4. Referring to claim 4. See above. In claim 4, line 2; it is unclear as to what is being referred to as the "gate pusher member". In the specifications a gate pusher member 190 is disclosed but no such reference is shown in the drawings as mentioned earlier. It is suggested the applicant correct the either the drawings or the specification to correspond to each other regarding the gate pusher member designation.

5. Referring to claim 5. In claim 5, line 2; it is unclear as to how the means "automatically" positions a product container in the stack area. It is broadly construed and generally understood to mean, "assembly includes means for positioning a product". It is suggested that the term "automatically" be removed.

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6. Referring to claim 12. In claim 12, line 2; it is unclear as to what is meant by the term "majority", the term is vague and indefinite. Furthermore, it is unclear as to how the first and the second U-shaped bend portions recess a "majority" of each of the retainers elements, whereas in the applicants Figure 3 it is shown that the U-shaped bend portion circumvents only member 61 and 62 respectively. It is broadly construed and generally understood to mean "the first and the second U-shaped bend portions recess *in each* of the plurality of retainer elements". Appropriate action is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1,2,5,6,14, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Wittern, Jr. et al. (U.S. Patent Number 6,302,293).

8. Referring to claim 1. Wittern et al. discloses a vending machine 10 comprising a cabinet frame 12 including top, bottom, rear and opposing side walls that collectively define a central cavity (Figure 1A); a plurality of column walls 20A-20H defining a plurality of stack areas C1- C7 for receiving and storing

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product containers 8; a door 18 pivotally mounted to the cabinet frame 12, said door 18 being adapted to selectively close the central cavity (Col. 4 line 26, Col. 8 line 15). Wittern et al. also discloses a front gate 28 assembly pivotally mounted through hinges 56A and 56B relative to the column walls 20A-20H (Col. 4 line 54), said front gate assembly 28 including a plurality of retainer elements 28 (Figure 1A and 2) operatively connected to the column walls 20A-20H through a plurality of hinge units 56A and 56B, said hinge units 56A and 56B establishing a swing radius enabling the plurality of retainer elements 28 to travel along an arcuate path from a first product retention position (closed position) to a second, product loading position (open position)(Col. 4 line 56-59). In viewing pivoting hinge 56B in Figure 7 in light of the closed and open positions of the retainer 28 in Figure 1A in column space C1 and C2, it is construed and understood that the path retainer element 28 must take to travel from a closed to an open position is arcuate. Wherein, in said first position (closed position), the plurality of retainer elements 28 extend longitudinally between respective ones of said plurality of column walls 20A-20H to retain product containers 8 in the stack areas C1-C7 and, in said second position (open position), said plurality of retainer elements 28 are generally aligned with respective ones of the column walls 20A-20H thereby enabling product containers 8 to be readily loaded into the plurality of stack areas C1-C7.

9. Referring to claim 2. See above. Wittern et al. discloses a vending machine 10 using a force applied to the middle of the wire member 44 by the

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means of an operator to shift the front gate assembly 28 from the second position (open position) to the first position (closed position) (Col 6 line 65 and Col 7 line 36).

10. Referring to claim 5. Wittern et al. discloses a vending machine 10 wherein said front gate assembly 28 includes means for positioning a product container 8 in the stack area C1-C7 (Col. 2 line 59 Col. 2 line 58-60).

11. Referring to claim 6. See claim 1. Wittern et al. discloses a vending machine 10 wherein the positioning means is constituted by portions of the plurality of retainer 28 elements (Figure 1A) traveling along the arcuate path.

12. Referring to claim 14. See claim 1. Wittern et al. discloses a method of loading product containers 8 into a plurality of stack areas C1-C7 defined by laterally spaced column walls 20A-20H arranged within a vending machine 10 (Col. 2 line 54-65) comprising: opening a door 18 to provide access to the plurality of stack areas C1-C7 (Col. 4 line 20-22); pivoting a front gate 28 assembly having a plurality of retainer elements 28 from a first position (open position)(Col. 2 line 60-61), wherein the plurality of retainer elements 28 extend between respective ones of the plurality of stack areas C1-C7 (Figure 1A, Col. 5 line 25-29), to a second position (closed position), wherein the plurality of retainer elements 28 are generally aligned with respective ones of the column walls 20A-20H, said plurality of retainer elements 28 traveling along an arcuate path by

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pivoting about the hinge 56A and 56B (see claim 1) established by a plurality of hinge units 56A and 56B (Col. 4 line 53) when traveling from the first position to the second position (open, closed positions respectively Col. 4 line 56-59); loading product containers 8 into the stack areas C1-C7; and pivoting the front gate 28 assembly from the second position to the first position (Col. 7 line 11-50).

13. Referring to claim 18. Wittern et al. discloses a method wherein pivoting the front gate 28 assembly includes manually moving the plurality of retainer elements (Figure 1, 1A, 8 and 9 Col. 7 line 32-44).

14. Referring to claim 19. Wittern et al. discloses a method to repositioning product containers 8 in respective ones of the plurality of stack areas C1-C7 upon pivoting of the front gate 28 assembly from the second position (closed position) to the first position (open position).

Allowable Subject Matter

15. Referring to claims 3,7-11,13,16 and 17. Claims 3,7-11,13,16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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16. Referring to claims 4,12 and 15. Claims 4,12 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (517) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RK

A handwritten signature in black ink that reads "Kathy Matecki". The signature is written in a cursive, flowing style.

**KATHY MATECKI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600**